

PD-1340-18

IN THE
COURT OF CRIMINAL APPEALS OF TEXAS

FILED
COURT OF CRIMINAL APPEALS
6/20/2019
DEANA WILLIAMSON, CLERK

CHRISTOPHER MIRANDA,
Appellant

v.

THE STATE OF TEXAS,
Appellee

**On Appeal from Court of Appeals
Eighth District of Texas, El Paso, Texas
Appellate Number 08-15-00349-CR**

**Appeal from the 120th Judicial District Court of El Paso County, Texas
Trial Court No. 20130D04013**

**RESPONSE TO STATE'S BRIEF ON
PETITION FOR DISCRETIONARY REVIEW**

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Oral Argument Not Requested

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TRIAL COURT

The Hon. Maria Salas-Mendoza
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Presiding Judge

APPELLATE COURT

**The Hon. A. Mclure, C.J.,
Y. Rodriguez, and G. Palafox.**
Eighth Court of Criminal Appeals
500 E. San Antonio Street
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Presiding Justices

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STATEMENT OF FACT AND PROCEDURAL HISTORY

Nature of the Case.

The State charged Christopher Miranda, Appellant, with eight counts: Counts 1-3: Improper Relationship between Educator and Student (under section 21.12 (A) of the Texas Penal Code); Count 4 and 5: Sexual Assault (under section 22.011(A)(2) of the Texas Penal Code; and, Counts 6-8: Sexual Performance by a Child (under section 43.25 (b) of the Texas Penal Code).¹ The jury found Miranda guilty on Counts 1, 3, 5, 7 and not guilty on Counts 2, 4, 6, and 8.² The jury sentenced Miranda to the Texas Department of Criminal Justice for ten years on Count 1, four years on Count 3, ten years on Count 5 and two years on Count 7.³ The sentences are to run concurrent with all counts; and assessed court costs of \$278.00 and no fine.⁴

Relevant Trial Fact and Procedure.

Motion to Suppress.

Prior to trial, Miranda filed a Motion to Suppress the Statement of the

1 CR 12-20, Indictment, Aug. 14, 2013.

2 CR 303-314.

3 *Id.*

4 *Id.*

Accused.⁵ The motion to suppress raised the issue that Miranda's statement to a school administrator constituted a custodial interrogation because the administrators acted as a state agent for law enforcement.⁶

Miranda's motion to suppress focused on a statement Miranda made to school administrator, Bobbi Russell-Garcia.⁷ Specifically, Miranda sought suppression of any and all oral and written statements made to the school administrator because Miranda provided an oral, electronically recorded statement that did not comply with sections 38.21 and 38.22 of the Texas Code of Criminal Procedure.⁸ In his motion to suppress, Miranda argued the statement was inadmissible because the school administrator acted as a state agent of law enforcement while Miranda was under custodial interrogation.⁹

The Ysleta Independent School District Administrator, Russell-Garcia, summoned Miranda to her office and questioned him in three separate interviews¹⁰ regarding allegations of sexual assault and sexual contacts with female students. At the suppression hearing, Russell-Garcia testified she is not a law enforcement officer, but she knew this matter was or would be a criminal investigation and

5 CR 256-261, Findings of Fact and Order, Oct. 13, 2015; and CR 170-171, Def.'s Mot. to Suppress, June 1, 2015.

6 *See generally* CR 170-171 and CR 256-261.

7 CR 170-171 and CR 256-261.

8 *Id.*

9 *Id.*

10 2 RR 41:20-24.

conducting her own investigation for the State Board of Educator Certification.¹¹

Trial.

At trial, the State presented three complaining witnesses – P.V., I.G. and K.R. K.R. testified, P.V. did not testify. The trial court also admitted and published to the jury Miranda’s statements and confession.

During trial, Miranda received a directed verdict as to Count 1 based on insufficiency of evidence,¹² but then the next day the trial court reversed its ruling prior to the jury charge after the State made a motion to reconsider.¹³

Post-judgment and Appeal.

Miranda filed a motion for mistrial regarding the incongruous verdict on the issue of Count 7,¹⁴ which the trial court denied. Miranda also filed a Motion for New Trial,¹⁵ based on factual and legal insufficiency, which the trial court denied.

Miranda timely filed his notice of appeal on November 16, 2015,¹⁶ and the trial court certified Miranda’s right of appeal.¹⁷

Course of Proceedings and Procedural Posture with the Eighth Court of Appeals

The appellate court rendered its opinion, reversing in part and affirming in

11 2 RR 61-63.

12 4 RR 234:1-259:12.

13 5 RR 4:14-22.

14 CR 367-368, Def.’s Mot. for Mistrial, Oct. 16, 2015.

15 CR 382, Mot. for New Trial, Oct. 28, 2015.

16 CR 384, Notice of Appeal, Nov. 16, 2015.

17 CR 358, Trial Court’s Cert. of Def.’s Right to Appeal, Oct. 16, 2015.

part. The appellate court sustained Miranda's third issue in part, and reversed Miranda's convictions as to Counts I (Improper Relationship) and Count VII (Sexual Performance), and rendered a judgment of acquittal as to those counts. The appellate overruled Miranda's first and second issue and affirmed the trial court's judgment as to Counts III (improper relationship) and Count V (sexual assault of a child younger than 17 years).

RESPONSE TO STATE'S GROUND FOR REVIEW

This Court should DENY discretionary review because the court of appeals holding is proper and because the temporal relationship between the offense period was distant in time, the criminal offenses Miranda was convicted of were not part of one criminal episode and the two complaining witnesses were not aware of each other. Miranda's extra-judicial confession is not corroborated by P.V., and such evidence remains insufficient.

SUMMARY OF ARGUMENT

Miller is distinguished from *Miranda* because it does not have temporal proximity and the State cannot link all crimes in a single uncorroborated confession.

ARGUMENT

I. A rational trier of fact could not have found that the State proved all essential elements of the crime beyond a reasonable doubt because the evidence was factually insufficient.

Weak evidence that does not support the verdict is clearly wrong and manifestly unjust.¹⁸ And, if supporting evidence is outweighed by the great weight and preponderance of the contrary evidence, the verdict is clearly wrong and manifestly unjust.¹⁹

Under counts 1 and 3, the State did not provide any evidence, or in the alternative, insufficient evidence to allege an improper relationship between educator and student. The State did not show an improper relationship between Miranda and student. The only complaining witness that testified was K.R. Initially, the trial court directed out Count 1, but then reconsidered. It is difficult to track in the indictment who the State refers to as their complaining witness

¹⁸ 5 RR 226:14-18.

¹⁹ *Grotti v. State*, 273 S.W.3d 273, 283 (Tex. Crim. App. 2008), citing *Roberts v. State*, 220 S.W.3d 521, 524 (Tex. Crim. App. 2007).

because the indictment only references “Jane Doe.” So, the State relies primarily on Miranda’s statements, but a defendant’s statement in a case standing alone is insufficient, and corroboration is required. Here, there was no corroboration presented as to any improper relationship with a student to support a finding of guilt for Counts 1 and 3. The same evidence was presented to support Count 5, but the evidence was not sufficient to support any charge of sexual assault, other than the uncorroborated statement.

In count 7, a charge of sexual performance, there is no evidence or corroborating evidence to support this charge. During trial the charge of sexual performance, under counts 6 and 7, related to I.G. and P.V. as complaining witnesses. The jury found Miranda not guilty on count 6, but guilty on count 7. But, there is no evidence or insufficient evidence to suggest that there was any sexual performance by either one of these individuals. And, as Miranda argued during his motion for directed verdict, sexual performance requires some sort of depiction. The State argued that inducement to perform is sufficient under the statute, but there was no evidence of any sort of inducement. The State did not present any evidence of an inducement; and, the jury received no evidence that something was exchanged for a sexual act. The jury’s verdict on count 6, not guilty, and count 7, guilty, is incongruous.

If the State failed to present evidence, can a rational trier of fact find guilt

beyond a reasonable doubt?

II. *Miller* is distinguished from *Miranda* because it does not have temporal proximity and the State cannot link all crimes in a single uncorroborated confession.

Other evidence tending to show that a crime was committed must corroborate the extrajudicial confession of a criminal defendant.²⁰ It need not be corroborated as to the person who committed it, since identity of the perpetrator is not a part of the *corpus delicti* and may be established by an extrajudicial confession alone.²¹ Under the *corpus delicti* rule, when the state relies on an extrajudicial confession of the accused to support a conviction, there must be independent corroborating evidence showing that a crime has actually been committed.²² When the burden of proof is beyond a reasonable doubt, a defendant's extrajudicial confession, standing alone, is not legally sufficient evidence of guilt.²³ “Corpus Delicti” simply means the crime itself, and is a requirement imposed on the state to prevent the possibility of a defendant being convicted of a crime based solely on his own false confession to a crime that never

20 *Brown v. State*, 576 S.W.2d 36, 42-43 (Tex. Crim. App. 1979); *Watson v. State*, 438, 227 S.W.2d 559, 562 (Tex. Crim. App. 1950).

21 *Gribble v. State*, 808 S.W.2d 65, 70 (Tex. Crim. 1990).

22 *Nisbett v. State*, 552 S.W.3d 244, 263 (Tex. Crim. App. 2018).; *Fisher v. State*, 851 S.W.2d 298, 302–03 (Tex. Crim. App. 1993) (“The common law corpus delicti rule holds that no criminal conviction can be based upon a defendant's extrajudicial confession *unless* the confession is corroborated by independent evidence tending to establish the corpus delicti.”)[Emphasis in original].

23 *Dansby v. State*, 530 S.W.3d 213, 224 (Tex. App.--Tyler 2017, pet. ref'd).

occurred.²⁴

Here, the court of appeals found that the primary corroborating evidence presented by the State was the testimony of one of the victims, K.R.²⁵ K.R. testified that she was sixteen at the time of the incident with Miranda.²⁶ She testified that on the evening in question Miranda invited her to hang out and she accepted.²⁷ While together, Miranda kissed her, took her clothes off, and had sexual intercourse with her.²⁸ She also testified Miranda knew at the time that she was a student at the high school where he worked.²⁹ A complainant's testimony alone is sufficient to support a jury finding that sexual contact occurred.³⁰ The court of appeals found that K.R.'s testimony constituted sufficient evidence to justify a jury to rationally find beyond a reasonable doubt that Miranda committed sexual assault of a child.³¹ Further, the appellate court found that it was

24 *Nisbett*, 552 S.W.3d at 263; *Fisher*, 851 S.W.2d at 303.

25 *Miranda v. State*, No. 08-15-00349-CR, 2018 WL 5862160 (Tex. App. Nov. 9, 2018), *petition for discretionary review refused* (Apr. 10, 2019), *petition for discretionary review granted* (Apr. 10, 2019).

26 *Id.*

27 *Id.*

28 *Id.*

29 *Id.*

30 *Id.*; *Garcia v. State*, 563 S.W.2d 925, 928 (Tex. Crim. App. [Panel Op.] 1978); *Bargas v. State*, 252 S.W.3d 876, 888 (Tex. App.--Houston [14th Dist.] 2008, no pet.).

31 *Miranda v. State*, No. 08-15-00349-CR, 2018 WL 5862160 (Tex. App. Nov. 9, 2018), *petition for discretionary review refused* (Apr. 10, 2019), *petition for discretionary review granted* (Apr. 10, 2019).

undisputed that at the time of the sexual contact Miranda was an employee of a public secondary school and that K.R. was one of his students.³² The appellate court K.R.'s testimony sufficient for the jury to find that Miranda, while an employee of the public secondary school, engaged in sexual intercourse with a person enrolled in the school at which he worked, and thus committed the offense of improper relationship between an educator and student beyond a reasonable doubt.³³

But, the appellate court found that the remaining counts complained of—Counts I and VII—were improper relationship between an educator and student and sexual performance by a child.³⁴ Both counts involved the student identified as P.V. Although Miranda confessed in the audio recording and in his written confession, to have had sexual intercourse with P.V. P.V. did not testify at trial.³⁵ There was no other corroborating evidence put forth regarding the allegations involving P.V.³⁶

The State contends that K.R.'s testimony satisfies a closely related crimes exception to the *corpus delicti* rule. The State claims that under this exception, the *corpus delicti* is established for all crimes if one or more of the properly

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

corroborated crimes are closely related to the others, as implicated by a close temporal connection. The State cites *Miller v. State*.³⁷

In *Miller*, the defendant was accused of engaging in illicit sexual conduct with his three-month-old daughter.³⁸ When approached by a detective, the defendant confessed orally and in writing to molesting his daughter on at least three occasions.³⁹ A few days later he returned to the police station and confessed to a fourth incident of sexual contact.⁴⁰ All four incidents had occurred during a twenty-seven-day period, and the defendant was charged with four counts of aggravated sexual assault of a child under six years of age.⁴¹ The State, however, was only able to produce corroborating evidence for one of the counts.⁴² On appeal, the defendant successfully argued to the court of appeals that the State had failed to establish the *corpus delicti* of the other three counts and had his convictions set aside as to those counts.⁴³ This Court reversed, carving out an exception to the strict application of the *corpus delicti* rule.⁴⁴ This Court

37 *Miller v. State*, 457 S.W.3d 919 (Tex. Crim. App. 2015).

38 *Id.* at 920.

39 *Id.*

40 *Id.*

41 *Id.*

42 *Id.* at 921.

43 *Id.*

44 *Id.* at 927.

acknowledged that the *corpus delicti* rule provides essential protections to defendants and declined to replace the rule with the trustworthiness standard adopted by the United States Supreme Court in *Opper v. United States*.⁴⁵ This Court held, however, that Texas law recognizes a closely-related-crimes exception to strict application of the *corpus delicti* rule, but qualified that the “exception applies only when the temporal relationship between the offenses is sufficiently proximate that introduction of the extrajudicial confession does not violate the policies underlying the corpus delicti rule.”⁴⁶ The Court then reversed the judgment of the court of appeals and reinstated the defendant's sentences on the three uncorroborated counts.⁴⁷

The El Paso appellate court distinguished *Miranda* from *Miller*. In *Miller*, the offenses confessed to all occurred during a twenty-seven-day period, and the court repeatedly emphasized the exception it had created requires the temporal proximity of the offenses to be sufficiently close so that introduction of the confession does not violate the purposes of the *corpus delicti* rule.⁴⁸ Here, the three sexual encounters did not occur at the same time and were distant in their proximity. In *Miller* the offenses were all committed against a single

⁴⁵ *Id.* at 925.

⁴⁶ *Id.* at 927.

⁴⁷ *Id.* at 929.

⁴⁸ *Id.* at 927-929.

individual—the defendant's daughter—however, here the offenses were alleged to have been committed against three different victims and there was no evidence that the victims were even aware of Miranda's involvement with the others until the allegations became public. Each was its own count and separate transaction and occurrence. The temporal connection between the offenses confessed by Miranda to be sufficiently close to warrant application of the closely related crimes exception to the *corpus delicti* rule, and otherwise violates the purposes of the rule. No evidence was presented that independently corroborated Miranda's confession regarding his offenses committed against P.V., his stand-alone confession was legally insufficient to establish guilt beyond a reasonable doubt. The State cannot link and validate all crimes in a single confession without any corroboration.

For these reasons, the Court should DENY the State's Petition for Review.

PRAYER

Appellant Miranda respectfully requests that this Court DENY review of this petition.

Respectfully submitted

/s/

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CERTIFICATE OF SERVICE

I certify that on June 18, 2019, a true and correct copy of Appellant's Response to State's Petition for Discretionary Review was served on counsel as listed below pursuant to Texas Rule of Appellate Procedure 9.5.

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CERTIFICATE OF COMPLIANCE

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- [7] Statement of the issues presented.
- [8] Statement of jurisdiction.
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